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Daniele Favaro

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PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

WALDBAUM, SAMUEL A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/525,627
Filing Date: May 16, 2005
Appellant(s): FAVARO ET AL.

Donald Firca, Jr. Reg. No. 48,140
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 18, 2010 appealing from the Office action mailed May 19, 2010.

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(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 2 and 4-14.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

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REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

JP2000107116	Shinkai Kiyoyasu	04-2000
US4064887	Geiger	12-1977
JP63154150		06-1988
US7062604	Welch	7032604
US4765697	Gardell	8-1988
US5215491	Willet	6-1993
US3861769	Jenkins	1-1975

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116, hereafter `116) in view of Geiger (U.S. 4,064,887, hereafter `887) and JP 63-154150 (hereafter `150).

3. Claims 1, 7-8 and 10: `116 teaches an automatic dishwasher, especially for built-in kitchenettes, comprising:

a cabinet equipped with a front door that seals the wash tub (Fig. 1 shows a cabinet surrounding the machine and part 9 shows the door that seals the tub);

housing at least one first and one second spray arm for washing the dishes placed in at least one rack (Fig. 1, part 11 shows the one rack, while parts 12 and 13 show the two sprayers);

said tub being closed on the bottom by a downward sloping panel that directs the wash water into a sump hopper which serves to collect and drain the water (Fig. 1, part 17 is the collector at the bottom of the downward sloping panel of the bottom of the machine);

`116 does not teach that the first spray arm extends coaxially with the sump hopper and that the second arm extends at a right angle to the bottom sloping panel. `887 teaches that a spray arm is coaxially aligned with the sump pump (Fig. 1 where part 22 is the sump pump, part 23 is the motor and part 26 is the first spray arm.) By placing the spray arm above the sump

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pump it provides support to the spray arm (Col. 3, line 37-46), It would have been obvious to one ordinary skilled in the art when the invention was made that to have placed the first spray arm above the sump pump to have provided support to the first spray arm, by moving the sump to be under the spray arm, thus allowing the spray arm with enough room to rotate.

`116 teaches that having the two arms that over lap is essential to increase the cleaning power of the washer without increasing the energy cost or the washing time ([0010]-[0014]). `887 teaches to optimize cleaning contact between the dishes and the sprayer to put the sprayer at an angle (Fig. 12 part 40, col. 4, line 45-78), also by angling the spray arm at a right angle to the slope of the bottom of the machine it avoids contact with the bottom, because when the arm is parallel to the bottom it can not hit the bottom (col. 4, line 1 – 69, col. 5, line 1 – 21). `150 is a dishwasher (fig. 1-4). `150 teaches that spray arm is angled and parallel to the bottom wall of the dishwasher (fig. 4, shows that spray arm, part 4 is angled and parallel to the bottom wall of the tub) with it axis of rotation perpendicular to the sloped bottom (fig. 4). It is obvious to one of ordinary skill in the art at the time the invention was made to have angled the second spray arm above sloped bottom wall so it axis of rotation is perpendicular to the bottom wall as taught by `150 in apparatus `116 in view of `887 to have increased and optimized the power wash zone as taught by `116, and to have avoided contact with the bottom or other objects as taught by `887.

`116 shows two spray arms overlapping to create the power clean area (Fig. 1, parts 12 and 13 overlap, Fig. 2(b) shows overlapping region). `116 teaches that the two spray arms avoid hitting each other by timing the two arms so that they are always angled 90 degrees from each other (paragraph [0027]). The resulting combination of `116 in view of `887 and `150, where the plane of rotation of the 1st arm is horizontal and the plane of rotation of the 2nd arm is sloped.

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Therefore the 2nd plane of rotation must necessarily partly extend under the plane of rotation of the first spray arm.

4. Claim 2: `116 teaches a sump hopper serving to collect and drain the wash water is located in an off-center position on the bottom of the wash tub (Fig. 1, shows that the collector is in an off-center position on the bottom).

5. Claim 9: See Claim 1 above. Claims directed to apparatus must be distinguished from prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a device is not what a device does” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning that the spray arms of apparatus `116 in view of `887 and `150 that the water exiting the second spray arm in the from the portion farthest from the first spray arm would be discharged upwards before combining with the first spray arm since the second spray arm is angled, while the water exiting second spray arm near the first arm will interact with the water exiting from the first spray arm sooner since it is closer to the first spray arm.

6. Claim 11: `116 teaches a dishwasher where it is inherent that the cabinetry can be built around the height of the dishwasher therefore the dishwasher is suitable for being integrated with the cabinetry.

7. Claim 12: `116 teaches that the spray arm overlap (see claim 1 above, where the planes of rotation of the spray arms are at different vertical heights, fig 1) and `150 that the second spray arm is angled (see claim 1 above, fig. 4 with the planes of rotation extends below and above the other spray arm). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the second spray arm (the one that is angled) in apparatus

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`116 in view of `887 and `150 to have substantially equal to that of the first spray arm and that the plane of rotation would also extend below that of the first to create the overlap of the spray arms as `116 teaches to create the high intensity wash zone.

Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claims 1-3 above, and further in view of Welch (U.S. 7,032,604, hereafter `604).

`116 in view of `887 and `150 teach the limitation of claim 1 above.

8. Claim 4: They do not teach that the door extends across the full width of the cabinet. `604 teaches that the door extends the full length of the cabinet (Fig. 1, part 22, shows the door at a open position that extends the full length of the cabinet). One of ordinary skill in the art would have understood that if the door did not extend the full width of the cabinet, that the rack containing the wares would not have been able to be pulled out. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have used a door that extends the full length of the cabinet to have made it possible to pull out the rack.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150 as applied to claim 1 above, and in further view of Gardell (U.S. 4,765,697, hereafter `697).

`116, `887 and `150 teach all the limitation of claim 1 above.

9. Claim 5: They do not teach that the door is a solid component provided with a trim panel. `697 teaches a solid door with a trim panel (col. 1, line 40 - 68), by having the trim it allows the washing machine to look decorative in the environment of the kitchen (col. 1, line 40 – 68). Therefore it would have been obvious to one skilled in the art at the time the invention

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was made to have included a trim panel to the door for the dishwasher to have made it look decorative.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claim 1 above, and further in view of Willet (U.S. 5,215,491, hereafter `491).

`116, `887 and `150 teach all the limitations of claim 1 above.

10. Claim 6: They do not teach the fact that the door has a transparent window. `491 teaches a transparent window located in the door (abstract) to allow the user to look in the dishwasher to see how the washing is progressing (col. 6, line 60 – 68, col. 7, line 1 – 10). Therefore it would have been obvious to one ordinary skilled in the art that the time the invention was made to have included a door with a transparent window to have allowed the user to look into the dishwasher.

Claim 13 and 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claim 10 above, and further in view of Jenkins (U.S. 3,861,769, hereafter `769).

`116, `887 and `150 teach all the limitations of claim 10 above.

11. Claim 13: `116, `887 and `150 are silent about what kind of motor/pump are used within the dishwasher. `769 is a dishwasher. `769 teaches using a lower profile motor for feeding water to the spray arms so that the height of the washing basket can be optimized and the height of the under space (the area of the pump) can be minimized (col. 2, lines 55-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a low-profile pump-motor as taught by `769 in apparatus `116 in view of `887 and `150 to have optimized the height of the washing area and minimized the space needed for the pump-motor.

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12. Claim 14: `150 teaches that two arms branch from the pump to the respective spray head (fig. 4, shows two manifolds branching off the pump cavity to their respective spray arms).

(10) Response to Argument

Response to Arguments for Claim 1 & 7-10.

Applicant is arguing that the prior art does not teach two spray arms in a dishwasher washer where the first spray arm is co-axially lined up with the sump and the second spray arm is parallel with the slopped bottom wall where the second spray arm extends below the first spray arm.

The prior art Shinkai Kiyoyasu (JP 200107116) teaches a dishwasher having two spray arms located at the bottom of the cabinet (Fig. 1, parts 12 & 13) where the spray arms overlap to create an enhanced washing zone thus allowing an increase of cleaning power for the overlap zone without an increasing the energy cost or washing time (fig. 1-3, [0010]-[0014] of the machine translation). Kiyoyasu does not teach that the first spray arm is located over the sump (fig. 1, part 17), but teaches that the spray arm is offset from the sump and located above the pump (fig. 1, part 16 is the pump). Geiger (U.S. 4,064,887) is a dishwasher. Geiger teaches that the spray arm can be aligned with the sump and the pump motor (fig. 1, parts 26, spray arm, part 23, pump, part 22 is the motor, with the recessed bottom portion/sump to collected the water for the pump) thus the pump and the motor help support the spray arm. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the one of the spray arms in apparatus Kiyoyasu can have aligned with the pump and motor within the sump as taught by Geiger to yield the predictable result of supporting the washing components.

Applicant is arguing that there is no benefit to combine Geiger with Kiyoyasu on the top of page 19 of applicant's appeal brief. It is well known within the dishwasher art that the spray arms are co-axially aligned with the sump, motor and pump so that the components can support each other and make for easy insulation of the components within the dishwasher.

Kiyoyasu and Geiger do not teach that one of the spray arms is angled and parallel to the sloped surface of the bottom of the dishwasher. Kiyoyasu does teach that the bottom surface of the wash tub is slopped (fig. 1, clearly shows that the bottom surface of the tub is slopped to direct water towards the sump). JP 63-154150 (hereafter `150) is a dishwasher. `150 teaches that a spray arm can be angled parallel to the slopping surface of the bottom wall of the dishwasher (fig. 4, clearly shows that the spray arm is parallel to the slopping surface of the bottom wall of the cabinet). It would have been obvious to one of ordinary skill in the art at the time the invention was made that the second spray arm in apparatus Kiyoyasu in view of Geiger can be angled to be parallel with the slope of the bottom wall as taught by `150 to yield the predictable result of the spray arm discharging water fluid towards the dishes.

Kiyoyasu teaches that the two spray arms overlap (fig. 1-3) so that the spray arms create an enhanced wash zone (fig. 1-3, [0010]-[0014] of the machine translation). Kiyoyasu further teaches that the spray arms avoid hitting each other by time the arms (fig. 2 & 3, [0027] of the machine translation). Applicant is arguing that the blades are not time so they do not contact with each other but so that their discharge of fluid does not interfere with each other. The problem is that Kiyoyasu teaches that the discharges do not interfere with each therefore to achieve that the arms are timed so that they do not contact each other so to avoid mutual interference ([0027]). It would have been obvious to one of ordinary skill in the art at the time the invention was made

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that the resulting combination of Kiyoyasu in view of Geiger and `150 would result with the first arm align over the sump and the second arm sloped with the bottom surface of the cabinet where the second spray arm would extend under the first spray arm to create the enhance cleaning zone as taught by Kiyoyasu.

Applicant is trying to argue that the combination of art will not inherently result with the claimed invention but it is merely possible. This is not a question of possible combination being inherent or a possibility. The prior art Kiyoyasu teaches that the spray arms over lap in order to create this enhanced wash zone, so the second spray arm of apparatus Kiyoyasu in view of Geiger and `150 rotation plane would extend partly under the first spray arm to create the enhanced wash zone as taught by Kiyoyasu.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant is arguing in claim 9 that the prior art does not teach that the spray arm that is parallel with the bottom wall will discharge fluid generally in a upward direction through the plane of rotation of the first spray arm. Kiyoyasu teach that the discharge of the fluid is in an upward direction through the planes of rotation of the spray arms to create the enhanced wash

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zone (fig. 1-3, [0010]-[0014] of the machine translation). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that the spray arm slopped along the bottom of the cabinet extending bellow the first spray arm in apparatus Kiyoyasu in view of Geiger and `150 would discharge it fluid in the upward direction through the plane of the first spray arm to create the enhanced wash zone as taught by Kiyoyasu.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/S. A. W./

Examiner, Art Unit 1712

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1712

Conferees:

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1712 /MBC/

/Anthony McFarlane/